

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules)
Regarding Multiple Address Systems)

WT Docket No. 97-81

To: The Commission

**REPLY COMMENTS OF
SOUTHERN COMPANY**

Southern Company ("Southern"), by and through its undersigned counsel and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415, hereby submits these Reply Comments on the Notice of Proposed Rule Making in the above-captioned proceeding.^{1/}

STATEMENT OF INTEREST

1. Southern and its operating companies are licensees of approximately 205 Multiple Address System ("MAS") stations operating in the 928/952/956 MHz band throughout their service

^{1/} In the Matter of Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97-81, Notice of Proposed Rule Making, 62 Fed. Reg. 11407 (March 12, 1997) ("NPRM"), Order extending Comments to May 1, 1997 and Reply Comments to May 16, 1997, released April 18, 1997.

area.^{2/} Each of Southern's fixed MAS stations service anywhere from 12-50 remote stations. The MAS facilities are extensively used for monitoring and controlling important points on the transmission, distribution, and generation networks throughout the southeastern United States. These points include breakers, substations, reclosers, regulators and other stations vital to the production and transmission of electric utility to its customers. Also, in 1992, Southern filed approximately 24 applications for MAS licenses in the 932/941 MHz band. Therefore, Southern has a strong interest in the outcome of this proceeding.

BACKGROUND

2. Southern has had an opportunity to review both the proposals set forth in the NPRM and the Comments filed thereon. While Southern supports certain aspects of the NPRM, Southern agrees with many of the commenters that geographic licensing and competitive bidding in the 932/941 MHz bands are unworkable recommendations for MAS operations. Southern does support, however, the Commission's proposal (and the supporting comments) which exclusively designates the 928/952/956 MHz band for

^{2/} Southern is an electric utility holding company which wholly owns the common stock of five electric utility operating companies (Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company) and one system service company, Southern Company Services, Inc. Its service territory includes a contiguous area of 122,000 square miles, covering most of the State of Alabama, almost all of the State of Georgia, the panhandle of Florida and 23 counties in southeastern Mississippi.

private, internal use. Southern submits the following Reply Comments in response to the Comments filed in this proceeding.

REPLY COMMENTS

I. The Record Opposes Use of the 932/941 MHz Band for Subscriber Based Services

3. Southern was one of the many applicants who filed seeking spectrum in the 932/941 MHz band for MAS operations. Southern intended and still intends to use this spectrum to expand its private MAS network. It did not and still does not intend to use this spectrum for subscription-based services. Based on the comments filed in this proceeding, it appears that other applicants also had no desire to use the MAS spectrum for commercial purposes.^{3/} Even the paging companies who provide commercial service indicate that their application and use of this band was for intermediate link proposes which should not be construed as offering commercial paging service over these channels.^{4/} Although over 50,000 applications were filed for 40 12.5 kHz channel pairs, it appears that many of these applications were speculative requests, filed during the height of application mills where applicants sought to resell their licenses to entities with bona fide MAS needs. Therefore,

^{3/} Puget Sound Energy, Inc. at 2 ("Puget Sound"), American Petroleum Institute ("API") at 15, n. 14, Colorado Interstate Gas Company ("CIG") at 2-3.

^{4/} AirTouch Paging and Arch Communications Group ("AirTouch") at 2-3 and ProNet at 4-5.

Southern agrees with the Utilities Telecommunications Council ("UTC") that the FCC's statement that the 932/941 band will now be used for commercial purpose is totally result-driven.^{5/} UTC made a compelling argument that the Commission could not have reached this conclusion based on the information stored in its database (as the original applications were accidentally destroyed), and there is no evidence that applicants have amended their applications to reveal their desire to provide subscriber-based services.^{6/}

4. Moreover, Southern notes that the 932/941 MHz MAS band was originally created to alleviate the shortage of private MAS frequencies.^{7/} Having installed over 100 MAS systems since 1992, Southern has found that there is not enough MAS spectrum in the 928/952/956 MHz band to accommodate its growing internal need. Accordingly, it filed the above-referenced applications for MAS spectrum in the 932/941 MHz band. Because these applications have not been processed, Southern has had to enter into short-spacing arrangements with other MAS licensees, or worse, has had to forego implementing new MAS systems due to a lack of MAS channels. Therefore, Southern agrees with the overwhelming majority of the commenters who oppose allocation of the 931/941 MHz for subscriber based services. Southern seeks

^{5/} UTC at 18. See also, Airtouch at 3-4 and at Attachment 1 and ProNet at 2-4.

^{6/} UTC at 22. See also, ProNet, Inc. at 2-4 and API at 17-20.

^{7/} API at 17.

designation of the 932/941 MHz band for exclusive private, internal MAS operations. At a minimum, Southern agrees with commenters who recommend that a portion of this band be designated for private, internal use.^{8/} Southern recommends that the Commission process and grant all non-mutually exclusive applications seeking use of the 932/941 MHz band, and proceed with the lottery of the remaining mutually exclusive applications.

II. The Record Overwhelmingly Supports Continued Use of the 928/952/956 MHz Band for Private, Internal Use

5. The one Commission proposal which did not meet any significant opposition was its tentative decision to designate the 928/952/956 MHz band for purely private, internal use.^{9/} In fact, an overwhelming majority of the commenters supported this tentative conclusion.^{10/} Southern also agrees that the 928/952/956 MHz band should be designated for private, internal use. The lone commenter who seeks to designate this band for a

^{8/} API at 23-28, UTC at 24-26, Puget Sound at 4-5, Black & Associates at 4-5, Microwave Data Systems at 6-7, CIG at 2, Public Service Company of New Mexico ("PNM") at 2 and GPM Gas Corporation ("GPM") at 5-6.

^{9/} NPRM at 8.

^{10/} Southern California Edison ("Edison") at 2-3, Wells Rural Electric Company ("Wells Rural") at 2-3, Cooperative Power Association ("Cooperative Power") at 3-4, Affiliated American Railroads ("AAR") at 2-3, Sensus Technologies at 3-4, Itron, Inc. at 2-6, Delmarva Power and Light Company ("Delmarva") at 2-4, GTECH at 3-4, UTC at 16-18, GPM at 5, API at 5-9, PNM at 1, and Microwave Data Systems at 7-8.

mixed use of subscriber based services and private, internal use services is Radscan, Inc.^{11/} Radscan claims that the use of this band is uncertain, contrary to all the evidence which clearly supports designation of this band as a purely private band.^{12/} The Commission acknowledges that approximately 70% of the licensees represented in this band are private, internal system users. However, Southern supports the Commission's proposal to grandfather existing subscriber-based services using this band. This is an equitable solution that will not disrupt any existing subscriber based services currently operating in the band.

III. The Record Does Not Support Geographic Licensing or Competitive Bidding for Any MAS Band

6. Not only do the existing private MAS users oppose geographic licensing and competitive bidding in the MAS bands, but the paging community and those investors who filed applications for MAS spectrum in the 932/941 MHz band also oppose geographic licensing and competitive bidding.^{13/} Southern

^{11/} Radscan at 5-15.

^{12/} Radscan at 5-7.

^{13/} ProNet at 5-8, AirTouch at 4-7, Coalition for Equitable MAS Licensing ("Coalition") passium, Data Address Systems Partnership passium, The Richard L. Vega Group passium, JMP Telecom Systems, Inc. ("JMP") at 1-3, Alarm Industry Communications Committee passium, Delmarva at 4-6, Itron at 3-4 and at 6-7, Sensus Technologies at 5, Baltimore Gas and Electric Company at 2, AAR at 3-4, Cooperative Power at 4-5, Burlington Northern and Santa
(continued...)

supports these commenters. First, geographic licensing imposes unnecessary burdens on private MAS users by limiting licensees to a certain frequency to be operated over a large geographic area. Southern's MAS network covers a large geographic area, but its MAS network utilizes various frequencies within the MAS band. The presence of existing licensees operating on these and other MAS frequencies would preclude Southern (or any MAS applicant) from obtaining a meaningful geographic license. If, however, the Commission adopts geographic licensing, Southern supports the proposal to protect incumbent licensees from interference from geographic licensees, and recommends that the current 90-mile separation criteria be maintained.

7. Southern agrees that the existing site-by-site licensing allows an MAS licensee to specifically tailor its system based on coverage demands,^{14/} and not based on mandatory coverage requirements as proposed by the Commission. Mandatory coverage requirements in the geographic licensing scheme present unduly burdensome construction requirements. For example, an MAS licensee which does not have a demand for service in a particular area may not need to construct a portion of its geographic license in certain locales. Mandatory coverage requirements would force the licensee to construct in these areas.

^{13/} (...continued)

Fe Railway Company ("BNSF") at 4-5 and at 6-7, Wells Rural at 3-4, Edison at 3-6, API at 30-33, GPM at 9, Puget Sound at 3-4, Microwave Data Systems at 8-10 and Black & Associates at 6-7.

^{14/} API at 31.

8. Second, competitive bidding makes no sense in the MAS context. As the majority of commenters have argued, the Commission has exceeded its auction authority in attempting to: (1) retroactively apply its auction authority to applications filed before August 10, 1993, and (2) apply competitive bidding to spectrum that the Commission has itself previously declared as private and incapable of being auctioned because the service is not subscription based. Southern supports the comments which urge the Commission not to dismiss the applications seeking MAS spectrum in the 932/941 MHz band, but rather to proceed with the lottery process for those applications which are mutually exclusive. Congress' intent was clear that pre-1993 applications were to be awarded using the lottery process.^{15/} Also, Congress defined auctionable spectrum as having to be subscription based, which is not the present case.^{16/}

9. Southern has invested substantial time and resources to prepare its applications for the 932.941 MHz MAS spectrum. It would be more prudent and administratively less complex for the Commission to proceed with the lottery. Moreover, some of these applications may be capable of being granted if they are not in a mutually exclusive situation. Southern urges the Commission to routinely process all non-mutually exclusive applications and award by lottery any remaining mutually exclusive applications.

^{15/} Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 392 (1993).

^{16/} Id. at 388.

10. Finally, Southern agrees with commenters who argue that it is inequitable to retroactively convert purely private spectrum into commercial purposes for the sole intent to make the competitive bidding rules apply in this MAS service.^{17/}

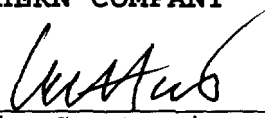
CONCLUSION

11. The record before the Commission is clear and commenters have made both compelling legal arguments and persuasive equitable arguments that (1) the 928/952/956 and the 932/941 MHz bands should be designated for private, internal use; (2) the 50,000 pending applications should be processed, subject to lotteries; and (3) geographic licensing and competitive bidding are inappropriate in the MAS context.

WHEREFORE THE PREMISES CONSIDERED, Southern Company respectfully requests that the Commission proceed in this docket in a manner consistent with the view expressed herein.

Respectfully submitted,

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^{17/} Alarm Industry Communications Committee passium, JMP passium, The Richard L. Vega Group passium, Data Address Systems Partnership passium, and Coalition passium.